

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Nikolchev, et al.

Examiner: Michael Brown

Application No.: 10/600,298

Group Art Unit: 3772

Filing Date: June 20, 2003

Confirmation No.: 6671

For: CONTRACEPTIVE TRANSCERVICAL
FALLOPIAN TUBE OCCLUSION
DEVICES AND METHODS

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

(revised) SUGGESTION OF INTERFERENCE
(RE U.S. PATENT NO. 6,096,052)

Sir:

Applicants respectfully suggest that an interference be declared with U.S. Patent No. 6,096,052 under 37 C.F.R. § 41.202 and that the following remarks be entered for the subject application.

CERTIFICATE OF ELECTRONIC FILING

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Cathi L.G. Thoorsell

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REMARKS

Applicants have copied claims from U.S. Patent No. 6,096,052 issued to Callister, *et al.* (hereinafter “the ‘052 Patent”) and respectfully suggest that an interference be declared under 37 C.F.R. § 41.202 between the present application and the ‘052 Patent. Specifically, allowed claims 12 through 18 of the present application are identical to and have been copied from claims 28, 29, 31, 33, 40, 41, and 42 of the ‘052 patent.

The effective filing date of the present application is earlier than that of the ‘052 patent, so that Applicants will be senior party in the suggested interference. The present application claims priority from U.S. Provisional Patent Application No. 60/059,861 (filed on September 24, 1997) as well as U.S. Patent Application Nos. 08/475,252 and 08/474,779 (both filed on June 7, 1995). As established below, support for the proposed count is found in the parent ‘779 and ‘252 applications originally filed on June 7, 1995 and in the 60/059,861 provisional application filed on September 24, 1997 (as well as in the instant application and the intervening parent applications). In contrast, the ‘052 patent issued from an application filed on June 8, 1998, and claims priority from no previous filing.

Showing in Support of Requested Interference

Under 37 C.F.R. § 41.202, Applicants suggest an interference be declared between the present application and the unexpired ‘052 Patent. Applicants have satisfied each requirement of § 41.202 as follows:

(1.) The patent with which Applicants are seeking an interference is U.S. Patent No. 6,096,052, which issued to Callister, *et al.* on August 1, 2000, and which is entitled Occluding Device and Method of Use.

(2.) The Proposed Count is as follows:

A contraceptive or sterilization device for occluding a reproductive body lumen to prevent the passage of reproductive cells therethrough, comprising:

a tubular member having a first end, a second end, and a lumen extending therein, which is at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration; and

a mesh member connected to the tubular member, which is permeable to allow for tissue ingrowth to thereby occlude the reproductive body lumen.

The proposed Count is identical to claim 28 of the '052 patent and claim 12 of the present application.

It is respectfully submitted that claims 1-20, 22, 23, 25, 28-42 of the '052 patent correspond to the Proposed Count because they would be anticipated or rendered obvious by the subject matter of the count if the count were treated as prior art. In addition, all pending claims of the present application (12-18, 35 and 36) correspond to the Proposed Count because they would be anticipated or rendered obvious by the subject matter of the count if the count were treated as prior art.

(3.) The claim chart below compares at least one claim of each party corresponding to the Count and also shows why the claims interfere within the meaning of § 41.203(a).

Claim 28 of U.S. Patent No. 6,096,052	Claim 12 of the Present Application	Interference under § 41.203(a)
A contraceptive or sterilization device for occluding a reproductive body lumen to prevent the passage of reproductive cells therethrough, comprising:	A contraceptive or sterilization device for occluding a reproductive body lumen to prevent the passage of reproductive cells therethrough, comprising:	Interfering under § 41.203(a) because each would anticipate the other because they are identical.
a tubular member having a first end, a second end, and a lumen extending therein, which is at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration; and	a tubular member having a first end, a second end, and a lumen extending therein, which is at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration; and	Interfering under § 41.203(a) because each would anticipate the other because they are identical.
a mesh member connected to the tubular member, which is permeable to allow for tissue ingrowth to thereby occlude the reproductive body lumen.	a mesh member connected to the tubular member, which is permeable to allow for tissue ingrowth to thereby occlude the reproductive body lumen.	Interfering under § 41.203(a) because each would anticipate the other because they are identical.

(4.) Applicants will prevail on priority at least because they have an earlier constructive reduction to practice date. As mentioned above, the effective filing date of the

present application is earlier than that of the '052 patent so that Applicants will be the senior party in the requested interference. The present application claims priority from provisional application 60/059,861 filed on September 24, 1997, which has the same relevant disclosure as the present application. Furthermore, Applicants are entitled to an effective filing date of June 7, 1995 because the subject matter of the proposed count is supported by Applicants' 1995 priority filings (Application Ser. Nos. 08/475,252 and 08/474,779). In contrast, the '052 patent issued from an application filed on June 8, 1998, and claims priority from no previous filing.

(5.) Claims 12-18, 35 and 36 correspond to the proposed count and were added to this application to provoke an interference. Because the present application claims priority from App. Ser. Nos. 08/474,779 and 08/475,252 and incorporates by reference their disclosures,¹ the support detailed in Addendum A for the purpose of demonstrating constructive reduction to practice (for section 6 below) also demonstrates written description support in the instant application for claims 12-18, 35 and 36.

(6.) Addendum A contains claim charts detailing examples of written description support for the subject matter of the proposed count (claim 12) in parent App. Ser. No. 08/474,779 (filed June 7, 1995). Addendum A also includes claim charts detailing examples of written description support for the rest of claims 13-18, 35 and 36 in Applicants' June 7, 1995 filings.

¹ Application Nos. 09/093,835 and 08/475,252, which are specifically incorporated by reference into the present application, contain the disclosure of Application No. 08/474,779 through incorporation by reference.

CONCLUSION

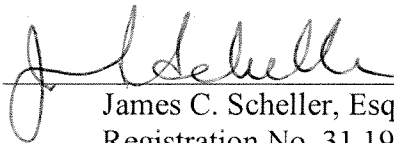
In view of the above, Applicants respectfully request that an Interference with the '052 patent be declared.

The Commissioner is hereby authorized to charge any required fee and/or credit any overpayment to Deposit Account Number 02-2666.

Respectfully submitted,
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ADDENDUM A

Specification Support for Corresponding Claims

Claim 12	Examples of Support in Parent Applications
A contraceptive or sterilization device for occluding a reproductive body lumen to prevent the passage of reproductive cells therethrough, comprising:	See, e.g., 08/474,779, page 3, lines 29-37; page 8, lines 9-22.
a) a tubular member having a first end, a second end, and a lumen extending therein, which is at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration; and	See, e.g., 08/474,779, Figs. 4, 6; page 9, lines 13-22; page 10, lines 30-38; page 11, lines 1-7; page 12, lines 16-30.
b) a mesh member connected to the tubular member, which is permeable to allow for tissue ingrowth to thereby occlude the reproductive body lumen.	See, e.g., 08/474,779, page 5, lines 4-8; page 8, lines 20-22; page 10, lines 5-17.

Claim 13	Examples of Support in Parent Applications
A contraceptive device installed within a lumen of the patient's reproductive system, comprising	See, e.g., 08/474,779, page 3, lines 29-37; page 8, lines 9-22.
a) a tubular member having a first end, a second end, and a lumen extending therein, and having at least a portion thereof which is secured to a body wall portion defining at least in part the lumen of the patient's reproductive	See, e.g., 08/474,779, page 9, lines 13-22; page 13, lines 16-27.

Claim 13	Examples of Support in Parent Applications
system; and	
b) an occluding member connected to the tubular member comprising an epithelialized mesh which occludes the lumen of the patient's reproductive system sufficiently to prevent the passage of reproductive cells therethrough.	See, e.g., 08/474,779, page 5, lines 4-8; page 8, lines 9-22; page 10, lines 5-17.

Claim 14	Examples of Support in Parent Applications
A contraceptive system, comprising	See, e.g., 08/474,779, page 6, lines 12-15.
a) a catheter having a proximal end, a distal end, and a lumen extending at least in part therein; and	See, e.g., 08/474,779, Fig. 3; Fig. 4; page 11, lines 26-30.
b) a contraceptive device releasably connected to the catheter, having a tubular member having a first end, a second end, and a lumen extending therein, which is at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration, and having a mesh member connected to the tubular member, which is permeable to allow for tissue ingrowth to thereby occlude the reproductive body lumen.	See, e.g., 08/474,779, Fig. 4; page 12, lines 4-19; page 9, lines 13-22; page 12, lines 16-30; page 5, lines 4-8; page 8, lines 13-22; page 10, lines 5-17.

Claim 15	Examples of Support in Parent Applications
A method of contraception comprising	See, e.g., 08/474,779, page 3, lines 29-30;

Claim 15	Examples of Support in Parent Applications
the steps of:	page 6, lines 30-34.
a) inserting within a desired body lumen a contraceptive device comprising a tubular member and a mesh member connected thereto;	See, e.g., 08/474,779, Fig. 5; Fig. 6; page 13, lines 3-15; page 9, lines 13-22; page 5, lines 4-8; page 8, lines 13-22; page 10, lines 5-17.
b) expanding the tubular member within the body lumen;	See, e.g., 08/474,779, Figs. 4-6; page 12, lines 16-30.
c) securing the expanded tubular member to a wall portion defining at least in part the body lumen; and	See, e.g., 08/474,779, Figs. 5-6; page 13, lines 16-27.
d) epithelializing the mesh member to occlude the body lumen.	See, e.g., 08/474,779, page 5, lines 4-8; page 8, lines 13-22; page 10, lines 5-17.

Claim 16	Examples of Support in Parent Applications
The method of claim 15 wherein the step of expanding the tubular member comprises the step of releasing a radially compressive force on the tubular member.	See, e.g., 08/474,779, Fig. 4, page 12, lines 4-19.

Claim 17	Examples of Support in Parent Applications
The method of claim 16 wherein the contraceptive device is disposed within a lumen of a delivery catheter, and the step of releasing the radially compressive force comprises longitudinally displacing the tubular member out a distal end of the delivery	See, e.g., 08/474,779, Fig. 3; Fig. 4; page 12, lines 20-22; page 13, lines 16-21.

Claim 17	Examples of Support in Parent Applications
catheter.	

Claim 18	Examples of Support in Parent Applications
The method of claim 15 wherein the expanded tubular member is disposed within the body lumen for sufficient time for it to be epithelialized within the body lumen and thereby secured to the wall portion.	See, e.g., 08/474,779, page 10, lines 5-17.

Claim 35	Examples of Support in Parent Applications
A sterilization device occluding a reproductive body lumen to prevent the passage of reproductive cells therethrough, comprising:	See, e.g., 08/474,779, page 3, lines 29-37; page 8, lines 9-22.
a) a tubular member having a first end, a second end, and a lumen extending therein, the tubular member at least in part expandable within the reproductive body lumen from a first configuration to a second larger configuration; and	See, e.g., 08/474,779, Fig. 4; page 9, lines 13-22; page 12, lines 16-30.
b) a mesh member connected to the tubular member, the mesh member permeable and receiving tissue ingrowth therein so as to occlude the reproductive body lumen.	See, e.g., 08/474,779, page 5, lines 4-8; page 8, lines 20-22; page 10, lines 5-17.

Claim 36	Examples of Support in Parent Applications
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<p>A contraceptive device installed within a lumen of the patient's reproductive system, comprising:</p>	<p>See, e.g., 08/474,779, page 3, lines 29-37; page 8, lines 9-22.</p>
<p>a) a tubular member having a first end, a second end, and a lumen extending therein, and having at least a portion thereof which is secured to a body wall portion defining at least in part the lumen of the patient's reproductive system; and</p>	<p>See, e.g., 08/474,779, page 9, lines 13-22; page 13, lines 16-27.</p>
<p>b) an occluding member connected to the tubular member comprising a mesh receiving tissue ingrowth therein, the ingrown mesh occluding the lumen of the patient's reproductive system sufficiently to prevent the passage of reproductive cells therethrough.</p>	<p>See, e.g., 08/474,779, page 5, lines 4-8; page 8, lines 13-22; page 10, lines 5-17.</p>